Supreme Court, U.S.
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No. 99-1584

IN THE SUPREME COURT OF THE UNITED STATES

THE PEOPLE OF THE STATE OF CALIFORNIA, *Petitioner*,

v.

BRENT A. JOHNSON, *Respondent*.

ON WRIT OF CERTIORARI TO THE
CALIFORNIA COURT OF APPEAL, FOURTH APPELLATE DISTRICT
DIVISION ONE

PETITIONER'S REPLY MEMORANDUM

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PETITIONER'S REPLY MEMORANDUM

I

THE CASE IS NOT MOOT

In its Brief in Opposition in No. 99-1584, Respondent asserts the case is moot and there is no article III jurisdiction as their are no "litigants in actual controversies" because after the California Court of Appeal's remittitur issued reversing Respondent's conviction, the case returned to the trial court where it was dismissed. Respondent's Brief in Opposition, pp. 2-3. Such a claim of mootness was rejected by this Court in *Minnesota v. Dickerson*, 508 U.S. 366 (1993). In that case, Dickerson, charged with a controlled substance possession offense, moved to suppress the cocaine seized from his person on the basis that the police violated *Terry v. Ohio*, 392 U.S. 1 (1968). The trial court denied the motion. Dickerson proceeded to trial and was convicted. The state appellate court reversed, finding a *Terry* violation and the Minnesota Supreme Court affirmed that decision in its own opinion. The state sought review by certiorari in this

Court. Writing for the Court, Justice White initially disposed by Dickerson's mootness claim.

> Before reaching the merits of the Fourth Amendment issue, we must address respondent's contention that the case is moot. After respondent was found guilty of the drug possession charge, the trial court sentenced respondent under a diversionary sentencing statute to a 2-year period of probation. As allowed by the diversionary scheme, no judgment of conviction was entered and, upon respondent's successful completion of probation, the original charges were dismissed. [Citation omitted.] Respondent argues that the case has been rendered moot by dismissal of the original criminal charges. We often have observed, however, that 'the possibility of a criminal defendant's suffering "collateral legal consequences" from a sentence already served' precludes a finding of mootness. *Pennsylvania v. Mimms*, 434 U.S. 106, 108, n.3 (1997 (*per curiam*); see also *Evitts v. Lucey*, 469 U.S. 387, 391, n.4 (1985); *Sibron v. New York*, 392 U.S. 40, 53-58 (1968). . . . Thus, we must conclude that reinstatement of the record of the charges against respondent would carry collateral legal consequences and that, therefore, a live controversy remains.

Dickerson, at pp. 371-372, n.2.

Here, as in *Dickerson*, criminal charges against Respondent have been dismissed following reversal by the state appellate court, and, therefore, under Respondent's reasoning, there are no "litigants in controversy" and the case is moot, depriving this Court of article III jurisdiction.

However, as Petitioner pointed out in its supplemental letter of May 16, 2000, charges can and will be reinstated against Respondent should this Court grant certiorari and find that the evidence of the charged offenses need not be suppressed under the Fourth Amendment's Exclusionary Rule. This is a far more onerous "consequence" than the "collateral consequence" of "reinstatement of the record of the [dismissed] charges" which prevented the *Dickerson* case from being rendered moot. Respondent faces prosecution and incarceration. This case is not moot; the court has jurisdiction. (*Cf. United States v. Hubbel*, 530 U.S. ___ (slip opinion p. 5) (2000).

II.

PETITIONER'S FOURTH AMENDMENT CLAIM WAS ADEQUATELY RAISED IN AND DECIDED BY THE CALIFORNIA COURT OF APPEAL

Respondent claims this Court should deny certiorari because Petitioner's claim that the "inevitable discovery and "independent source" doctrines preclude application of the Fourth Amendment Exclusionary Rule were not adequately presented and decided ("exhausted") in the California Court of Appeal and California Supreme Court. Respondent's Brief in Opposition, pp. 5-8. Not so.

In its brief to the California Court of Appeal, Petitioner asserted that should the appellate court find, contrary to the trial court, that there was not substantial compliance with knock-and-announce requirements, suppression was not appropriate because, "the officers would have inevitably discovered the narcotics," pursuant to the execution of the valid and unchallenged warrant, citing *People v. Lamas*, 229 Cal. App. 3d 560, 282 Cal. Rptr. 296 (1991) and *United States v. Diaz-Espindola*, 928 F.2d 314 (9th Cir. 1991). Brief of the Attorney General to the California Court of Appeal, pp. 12-13, in *People v. Brent A. Johnson*, D030489. In its opinion the California Court of Appeal addressed and rejected this claim. *See*, Appendix A, pp. A-6 - A-7 to the Petition for Writ of Certiorari. The Court of Appeal flatly held, "we note the doctrine of inevitable discovery does not prevent application of the exclusionary rule here." (*Ibid.*) In its Petition for Review to the California Supreme Court, the Attorney General again raised the "inevitable discovery" claim. Attorney General's Petition for Review to the California Supreme Court, pp. 13-17.

Respondent asserts the Attorney General never presented the "inevitable discovery with valid warrant"

argument to the state courts. Respondent's Brief in Opposition, p. 7. This argument is specious.

The validity of the search warrant was never challenged by Respondent. The warrant was presumptively valid and provided the only basis justifying the officers' entry into Respondent's residence and search and seizure of evidence. The "inevitable discovery" with warrant claim was raised by Petitioner and rejected by the California Court of Appeal. The issue[1] was "exhausted."

Exhaustion of a claim requires only that the claim be "fairly presented" to the state court based on a statement of facts and reference to a specific federal constitutional guarantee or doctrine. *Gray v. Netherland*, 518 U.S. 152, 162-163 (1996); *Picard v. Connor*, 404 U.S. 270, 275-276 (1971). The Attorney General clearly argued to the California Court of Appeal that if knock-and-announce requirements were not met, the execution of the valid search warrant would have led to the "inevitable

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1. Respondent asserts the Attorney General mentioned the "independent source" doctrine only twice and gratuitously in its Petition for Review to the California Supreme Court. Respondent's Brief in Opposition, p. 7. It will suffice to observe that "inevitable discovery" and "independent source" doctrines are, in this context, merely different sides of the same coin. The valid search warrant was an "independent source" for the seizure of the evidence and the execution of that warrant would have inevitably led to the discovery of the evidence. The two doctrines are different ways of expressing the notion of attenuation. *See*, *Nix v. Williams*, 467 U.S. 431, 443 (1984); LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* (3d Ed. 1996), § 11.4(a), p. 244.

discovery" of the evidence; a claim rejected by the California Court of Appeal.

Dated: June 6, 2000.

Respectfully submitted,

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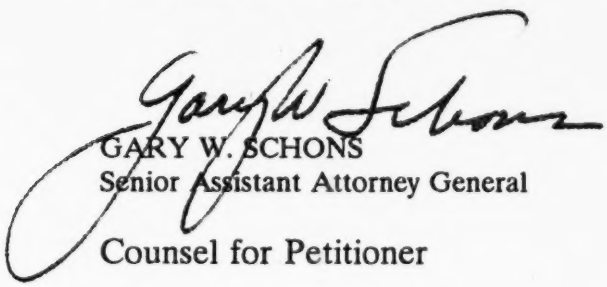

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